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6 RICHARD W. WIEKING
7 CLERK, U.S. DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

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15 MARY JO KITTOK; CURTIS BELL,
16 Plaintiff,
17 v.
18 ROWTOWN, INC., A California
19 Corporation, and DOES 1 through 100,
20 inclusive
21 Defendants.

22 C08 03559
Case No.

23 } COMPLAINT FOR DAMAGES AND
24 } INJUNCTIVE RELIEF FOR
25 } VIOLATIONS OF: AMERICAN'S
26 } WITH DISABILITIES ACT; UNRUH
27 } CIVIL RIGHTS ACT; CALIFORNIA
28 } DISABLED PERSONS ACT;
} NEGLIGENCE
} DEMAND FOR JURY

29 Plaintiffs MARY JO KITTOK and CURTIS BELL complain of Defendants
30 ROWTOWN, INC., A California Corporation, and DOES 1 through 100, inclusive,
31 (hereinafter referred to as "Defendants") and alleges as follows:

32 **INTRODUCTION:**

33 1. This is a Civil Rights action for discrimination against persons with physical
34 disabilities, of which Plaintiff is a member of said class, for violation of the Americans
35 with Disabilities Act and related state laws addressing the defendants' failure to provide
36 wheelchair accessible transportation. Plaintiff seeks injunctive relief and damages for
37

1 violations of civil rights and for damages flowing from such violations.

2 **PARTIES:**

3 2. Plaintiff MARY JO KITTOK is a California resident with physical
4 disabilities. She is an amputee who suffers from arthritis and requires a wheelchair for
5 mobility.

6 3. Plaintiff CURTIS BELL is a California resident with physical disabilities. He
7 is an amputee who has a prosthetic device and requires a wheelchair for mobility for
8 any distance.

9 4. Defendants are or were at the time of the incident the owners and operators
10 and/or lessors and lessees of the Restaurant located at 700 Cannery Row, Monterey,
11 California.

12 5. Plaintiffs do not know the true names of Defendants, their business capacities,
13 their ownership connection to the property and business, or their relative
14 responsibilities in causing the access violations herein complained of, and alleges a
15 joint venture and common enterprise by all such Defendants. Plaintiffs are informed
16 and believe that each of the Defendants herein, including DOES 1 through 100,
17 inclusive, is responsible in some capacity for the events herein alleged, or is a necessary
18 party for obtaining appropriate relief. Plaintiffs will seek leave to amend when the true
19 names, capacities, connections, and responsibilities of the Defendants and DOES 1
20 through 100, inclusive, are ascertained

21 **FACTUAL ALLEGATIONS:**

22 6. The Restaurant is a facility open to the public, a place of public
23 accommodation, and a business establishment.

24 7. The Plaintiffs, husband and wife, patronized the Restaurant, to dine, on May
25 13, 2007.

26 8. During their visit, the Plaintiffs encountered various violations of the
27 Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24 of
28 the California Code of Regulations, including, but not limited to, there were no

1 accessible entrance into the bathrooms, due to excessive pressures required to open the
2 bathroom doors, and there were inaccessible features in the bathrooms.

3 9. Naturally, Plaintiffs KIT TOK and BELL were frustrated, angry and/or vexed
4 as a result of encountering these conditions, these violations of their civil rights, and the
5 lack of safe, convenient and accessible facilities. Although these injuries are modest in
6 scope and did not result in any loss of wages or economic damage or medical care or
7 attention, the continued violation of the Plaintiffs' civil rights by these defendants and
8 the highly unpleasant emotional distress caused by such unlawful treatment is
9 attributable to the actions or inactions of the defendants and plaintiff seeks redress from
10 these defendants for such injury.

11 10. Plaintiffs would like to return and patronize the Defendants' Restaurant,
12 however, the Plaintiffs are unable to use the Restaurant on a "full and equal" basis until
13 the Restaurant is brought into compliance with the provisions of the Americans with
14 Disabilities Act Accessibility Guidelines and state accessibility law as pled herein.
15 Plaintiffs have been and currently are being deterred from returning and patronizing the
16 Defendants' Restaurant on a full and equal basis.

17 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH
18 DISABILITIES ACT OF 1990 (On behalf of Plaintiffs and Against All Defendants)
(Cal Civ § 51-53)**

19 11. The Defendants are persons who either own, operate, lease or lease to a
20 place of public accommodation. As such, the Defendants are required to (1) ensure that
21 all construction, alteration, or modification is barrier free and complies with the
22 Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24 of
23 the California Code of Regulations (aka "California Building Code"); and/or (2)
24 remove all existing barriers where such removal is "readily achievable." The
25 Defendants have failed to meet these obligations. The existence of readily achievable
26 removed barriers and barriers in violation of the ADAAG and/or California Building
27 Code, including, but not limited to, there were no accessible entrance into the
28 bathrooms, due to excessive pressures required to open the bathroom doors, and there

1 were inaccessible features in the bathrooms, is unlawful and has resulted in the
2 defendants' failure to provide full and equal accommodations, advantages, facilities,
3 privileges and/or services to the Plaintiffs.

4 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
5 RIGHTS ACT (On behalf of Plaintiffs and Against All Defendants) (Cal Civ § 51-53)**

6 12. The Defendants are persons who either own, operate, lease or lease to a
7 place of public accommodation or business establishment. As such, the Defendants are
8 required to (1) ensure that all construction, alteration, or modification is barrier free and
9 complies with the Americans with Disabilities Act Accessibility Guidelines
10 ("ADAAG") and Title 24 of the California Code of Regulations (aka "California
11 Building Code"); and (2) remove all existing barriers where such removal is "readily
12 achievable." The Defendants have failed to meet these obligations. The Defendants
13 intended the physical and architectural condition of their property. The existence of
14 readily achievable removed barriers and barriers in violation of the ADAAG and/or
15 California Building Code, including, but not limited to, there were no accessible
16 entrance into the bathrooms, due to excessive pressures required to open the bathroom
17 doors, and there were inaccessible features in the bathrooms, is unlawful and has
18 resulted in the defendants' failure to provide full and equal accommodations,
19 advantages, facilities, privileges and/or services to the Plaintiffs.

20 13. The acts alleged above, which form the basis of the Plaintiffs' discrimination
21 claim, are intentional acts.

22 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA
23 DISABLED PERSONS ACT (On behalf of Plaintiffs and Against All
24 Defendants) (Cal Civ § 54-54.8)**

25 14. The Defendants are persons who either own, operate, lease or lease to a place
26 of public accommodation or a facility open to the public. As such, the Defendants are
27 required to (1) ensure that all construction, alteration, or modification is barrier free and
28 complies with the Americans with Disabilities Act Accessibility Guidelines
("ADAAG") and Title 24 of the California Code of Regulations (aka "California

1 Building Code"); and (2) remove all existing barriers where such removal is "readily
2 achievable." The Defendants have failed to meet these obligations. The existence of
3 readily achievable barriers and barriers in violation of the ADAAG and/or
4 California Building Code, including, but not limited to, there were no accessible
5 entrance into the bathrooms, due to excessive pressures required to open the bathroom
6 doors, and there were inaccessible features in the bathrooms, is unlawful and has
7 resulted in the defendants' failure to provide full and equal accommodations,
8 advantages, facilities, privileges and/or services to the Plaintiffs.

9 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE (On behalf of Plaintiffs and
Against All Defendants)**

10 15. The Defendants had a general duty and a duty arising under the Americans
11 with Disabilities Act and the Unruh Civil Rights Act and California Disabled Persons
12 Act to provide safe, convenient, and accessible facilities to the Plaintiffs in the running
13 of their Restaurant. Their breach of this duty, as alleged in the preceding paragraphs,
14 has caused injury and damage as alleged above.

16 **PRAYER:**

17 Wherefore, Plaintiffs pray that this court award damages and provide relief as
18 follows:

20 1. For injunctive relief, compelling Defendants to comply with the Americans
21 with Disabilities Act and the Unruh Civil Rights Act. **Note:** the Plaintiffs are not
22 invoking section 55 of the California Civil Code and are not seeking injunctive relief
23 under that section.

24 2. Damages under the Unruh Civil Rights Act and/or the California Disabled
25 Persons Act. **Note:** A Defendant cannot be held liable for damages under both the
26 Unruh Civil Rights Act and the California Disabled Persons Act and the Plaintiffs will
27 make an election at trial depending upon the evidence amassed.

1 3. Reasonable attorneys' fees, litigation expenses and costs of suit, pursuant to
2 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3 and Cal. Civ. Proc. § 1021.5.
3

4 Dated: July 21, 2008 CENTER FOR DISABILITY ACCESS, LLP

5 By: 
6 MARK D. POTTER
7 Attorneys for Plaintiff

8 **DEMAND FOR JURY TRIAL**
9

10 Plaintiff hereby demands a jury for all claims for which a jury is permitted.

11 Dated: July 21, 2008 CENTER FOR DISABILITY ACCESS, LLP
12

13 By: 
14 MARK D. POTTER
15 Attorneys for Plaintiff

JS 44 (Rev. 12/07) (cand rev 1-16-08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

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CIVIL COVER SHEET

I. (a) PLAINTIFFS

MARY JO KITTOK & CURTIS BELL

DEFENDANTS

ROWTOWN, INC., A California Corporation, and DOES 1 through 100

(b) County of Residence of First Listed Plaintiff Riverside County
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

E-FILING

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCAL LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Mark D. Potter/Russell C. Handy SBN 166317/195058
The Center for Disability Access, LLP
100 E. San Marcos Blvd., Suite 400
San Marcos, CA 92069 Ph: (760) 480-4162 Fx: (760) 480-4170

Attorneys (If Known)

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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	PERSONAL INJURY	422 Appeal 28 USC 158	400 State Reapportionment
120 Marine	310 Airplane	362 Personal Injury—Med. Malpractice	423 Withdrawal 28 USC 157	410 Antitrust
130 Miller Act	315 Airplane Product Liability	365 Personal Injury — Product Liability	425 Drug Related Seizure of Property 21 USC 881	430 Banks and Banking
140 Negotiable Instrument	320 Assauk, Libel & Slander	368 Asbestos Personal Injury Product Liability	435 Liquor Laws	450 Commerce
150 Recovery of Overpayment & Enforcement of Judgment	330 Federal Employers' Liability	370 Other Fraud	440 R.R. & Truck	460 Deportation
151 Medicare Act	340 Marine	371 Truth in Lending	450 Airline Regs.	470 Racketeer Influenced and Corrupt Organizations
152 Recovery of Defaulted Student Loans (Excl. Veterans)	345 Marine Product Liability	380 Other Personal Property Damage	460 Occupational Safety/Health	480 Consumer Credit
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	385 Property Damage Product Liability	490 Other	490 Cable/Sat TV
160 Stockholders' Suits	355 Motor Vehicle Product Liability	360 Other Personal Injury	500 Other	810 Selective Service
190 Other Contract			510 Fair Labor Standards Act	850 Securities/Commodities/ Exchange
195 Contract Product Liability			520 Labor/Mgmt. Relations	875 Customer Challenge
196 Franchise			530 Labor/Mgmt. Reporting & Disclosure Act	12 USC 3410
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	
210 Land Condemnation	441 Voting	510 Motions to Vacate Sentence	861 HIA (1395ff)	890 Other Statutory Actions
220 Foreclosure	442 Employment	Habeas Corpus:	862 Black Lung (923)	891 Agricultural Acts
230 Rent Lease & Ejectment	443 Housing/ Accommodations	530 General	863 DIWC/DIW (405(g))	892 Economic Stabilization Act
240 Torts to Land	444 Welfare	535 Death Penalty	864 SSID Title XVI	893 Environmental Matters
245 Tort Product Liability	445 Amer. w/ Disabilities Employment	540 Mandamus & Other	865 RSI (405(g))	894 Energy Allocation Act
290 All Other Real Property	446 Amer. w/ Disabilities Other	550 Civil Rights	870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act
	440 Other Civil Rights	555 Prison Condition	871 IRS—Third Party 26 USC 7609	900 Appeal of Fee Determination
VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. Section 12101			
	Brief description of cause: American's with Disabilities Act			

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court

Transferred from
4 Reinstated or
Reopened

5 another district
(specify) 6 Multidistrict Litigation

Appeal to District
 7 Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
"NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
(PLACE AND "X" IN ONE BOX ONLY) SAN FRANCISCO/OAKLAND SAN JOSEDATE
July 21, 2008

SIGNATURE OF ATTORNEY OF RECORD

ORIGINAL